



DEPARTMENT OF HEALTH & HUMAN SERVICES
Centers for Medicare & Medicaid Services
Division of Medicaid and State Operations, Region VI

1301 Young Street, Room 827
Dallas, Texas 75202
Phone (214) 767-6301
Fax (214) 767-0270

November 1, 2001

Ms. Linda K. Wertz, State Medicaid Director
Health and Human Services Commission
Post Office Box 13247
Austin, TX 78711

Dear Ms. Wertz:

The State of Texas has submitted a request for an amendment to Texas Home and Community-Based Services waiver (HCBSW) No. 0221.90.R1.01. The waiver services individuals with related conditions under the Community Living Assistance and Support Services (CLASS) program. The State is requesting to include a vendor fiscal intermediary (VFI) option in the CLASS waiver program to include participant choice for self-direction and self-management of residential habilitation and respite services within the waiver.

Based upon our review of the amendment request and the State's responses to our informal request for additional information, we have determined that they do not fully conform to the statutory and regulatory requirements for the home and community-based waiver program. Please provide the following additional information and/or clarifications.

1. Appendix B-1, page 5
Please clarify that room and board will not be paid for American Camping Association accredited camps under out of home respite.
2. Appendix B-2, Out of Home Respite
Please include a statement that payment for room and board does not include American Camping Association accredited camps.
3. Appendix F, Audit Trail
Please clarify that FFP will be claimed according to the following:
For service delivery only- FFP may be claimed. For fiscal intermediary only- administrative match. If an agency provides both service delivery and VFI, then the match is claimed as indicated above.
4. Overview Information, page 7, 12
Reference is made to section 4480 of the State Medicaid Manual (SMM) as a basis for the amendment. This section of the SMM pertains to the State Plan personal care services and should not be used as a basis for a waiver that does not include personal care as a separate waiver service.

We recommend that you breakout personal care services from residential habilitation services. Since habilitation and personal care are enumerated in the statute, they should not be combined under one definition in the waiver.

5. Overview Information, page 16, Direct Services Agency

The issue of free choice of providers remains a concern. Based on the language in the approved waiver, a qualified provider agency must be capable of providing the full array of home and community-based services as defined in the waiver. This approach to the selection of providers violates the freedom of choice provisions of section 1902 (a)(23). While regulations at 42CFR 431.51 (c)(2) allow States to establish "reasonable" standards, in our opinion this requirement would not be reasonable because individual providers (i.e. speech therapists) would not be able to furnish all of the waiver services. Therefore, they would have to be employed by the provider agency to deliver a component of the service package. Waiver recipients must be given the freedom to choose from among all qualified providers. In addition, the State must permit whatever types of providers, which are qualified to furnish the various waiver service components, to furnish those services independently of the provider agencies. The State's current policy limits the recipient's free choice of providers and it also places a limit on who is allowed to enroll as a provider under the waiver program.

6. Overview Information, page 21, item b, VFI Personal Assistant

The reference that is made to licensed home health agencies should be changed to home care agency.

7. Overview Information, page 23, item d, VFI Respite Provider

This item now excludes payment for room and board for all out of home respite services. Please include a statement to clarify that room and board is only available in institutional settings, which does not include American Camping Association accredited camps.

8. Overview Information, page 28, item b, Nurse Delegation

In the section of the document, you discuss the rules of the Board of Nurse Examiners. Please clarify if this is the Nurse Practices Act. You also make reference to a home health agency as the agency providing delegated PCA duties. Do you really mean home care agency?

Under section 1915 (c) of the Social Security Act, a waiver request must be approved, denied or additional information requested within 90 days of receipt, or the request will be deemed granted. The 90-day period in the case ends on November 21, 2001. This constitutes a formal request for additional information, and a new 90-day period begins upon receipt of the State's written response.

Please contact me at (214) 767-6278 if you have any questions regarding this request.

Sincerely,

Cheryl Rupley, Health Insurance Specialist
Medicaid Operations and Financial Management Branch
Division of Medicaid and State Operations

